STATE OF MICHIGAN

COURT OF APPEALS

MARCY ALMASY,

Plaintiff-Appellee,

v

JAMES LOUIS JASON,

Defendant-Appellant.

UNPUBLISHED
October 23, 2003

No. 240868
Lenawee Circuit Court
LC No. 00-022439-DP

Before: Fitzgerald, P.J., and Zahra and Fort Hood, JJ.

PER CURIAM.

Defendant appeals by leave granted from the trial court's order awarding plaintiff child support prior to her filing of the complaint and back to the date of the child's birth in 1987. We affirm.

I. Facts and Procedure

Plaintiff became pregnant in November 1986 while she was living in California and was in a relationship with defendant. Plaintiff gave birth to a child on August 13, 1987. In 2000, plaintiff, who moved to Michigan with her child in 1997, filed a complaint against defendant seeking a paternity finding and child support. Defendant received the summons in California, where he had been living since 1987. Defendant filed an appearance in propria persona from California and signed a stipulation and order agreeing to take a paternity test. The paternity test revealed a 99.99 percent probability that defendant was the child's father. A Lenawee County prosecutor sent the results of the test to defendant, along with a letter, a paternity acknowledgement form, and a judgment of paternity and support. Defendant signed the paternity acknowledgment form and judgment of paternity and support. Later, at a hearing on the matter of child support, the trial court determined that, because defendant signed the paternity acknowledgment form, he must pay child support prior to the date the complaint was filed, and back to the date of the child's birth.

II. Analysis

A. Prior Child Support

Defendant argues that the trial court erred in awarding plaintiff prior child support, because defendant's acknowledgement of paternity after the plaintiff commenced her action for

child support did not require him to pay this prior child support under MCL 722.717(2). This issue involves the interpretation of a statute, which is a question of law that is reviewed de novo on appeal. *Burba v Burba (After Remand)*, 461 Mich 637, 647; 610 NW2d 873 (2000). The statute at issue, MCL 722.717(2), provides, in pertinent part:

> In addition to providing for the support of the child, the order [of filiation] shall also provide for . . . the support of the child before the entry of the order of filiation . . . . However, if proceedings under this act are commenced after the lapse of more than 6 years after the birth of the child, an amount shall not be awarded for expenses or support that accrued before the date on which the complaint was filed unless 1 or more of the following circumstances exist:
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> (a) Paternity has been acknowledged by the father in writing in accordance with statutory provisions.
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> * * *
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> (c) The defendant was out of the state, was avoiding service of process, or threatened or coerced the complainant not to file a proceeding under this act during the 6-year period. The court may award an amount for expenses or support that accrued before the date the complaint was filed if the complaint was filed within a period of time equal to the sum of 6 years and the time that the defendant was out of state, was avoiding service of process, or threatened or coerced the complainant not to file a proceeding under this act.

The trial court determined that, because defendant acknowledged paternity in writing, he was required to pay prior child support back to the date of the child's birth. Defendant argues that the use of the phrase "has been" in MCL 722.717(2)(a) should be read in reference to the filing of the complaint, and that MCL 722.717(2)(a) only applies when paternity was acknowledged before the complaint was filed. However, assuming, without deciding, that defendant's interpretation of the statute is correct, we conclude that the trial court did not err in awarding plaintiff child support back to the date of the child's birth, because plaintiff was entitled to such prior child support under MCL 722.717(2)(c). " '[W]hen this Court concludes that a trial court has reached the correct result, this Court will affirm even if it does so under alternative reasoning.' " *Lavey v Mills*, 248 Mich App 244, 250; 639 NW2d 261 (2001), quoting *Messenger v Ingham Co Prosecutor*, 232 Mich App 633, 643; 591 NW2d 393 (1998).

In *Caldwell v Chapman*, 240 Mich App 125, 130-132; 610 NW2d 264 (2000), this Court explained when an award of prior child support is appropriate under MCL 722.717(2)(c):

> MCL 722.717(2) . . . clearly provides that when an order of filiation is entered, it may provide for payment "for the support of the child *before* the entry of the order of filiation . . . ." (Emphasis added.) However, the last sentence of this subsection limits when prior support may be awarded, by providing that "if proceedings under this act are commenced after the lapse of more than 6 years from the birth of the child, an amount shall not be awarded for expenses or support that accrued before the date on which the complaint was filed . . . ." *Id.* The statute then sets forth three exceptions to this six-year period of limitation.

> MCL 722.717(2)(c) . . . tolls the six-year period of limitation by allowing an award of child support that accrued before a paternity suit if "the defendant was out of the state, was avoiding service of process, or threatened or coerced the complainant not to file a proceeding under this act during the 6-year period." The phrase "during the 6-year period" clearly refers to the first six years of the child's life. See MCL 722.717(2) . . . .
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> The plain language of the statute indicates that the fact that a defendant is out of the state during the first six years of the child's life is enough to trigger the tolling provision in MCL 722.717(2)(c) . . . .
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> However, the fact that a defendant was out of state, or avoiding service of process, or threatening the complainant during the first six years of the child's life does not give the complainant an unlimited amount of time in which to seek prior child support. The second sentence of subsection 2(c) provides that "the court may award an amount for expenses or support that accrued before the date the complaint was filed if the complaint was filed within a period of time equal to the sum of 6 years and the time that the defendant was out of state, was avoiding service of process, or threatened or coerced the complainant not to file a proceeding under this act."

In this case, there is no dispute that defendant lived out of state during the first six years of the child's life and that he still lived out of state when plaintiff filed the complaint. Accordingly, plaintiff was entitled to prior child support under MCL 722.717(2)(c), and the trial court did not err in awarding plaintiff such support. *Caldwell, supra* at 131-132.

B. Ineffective Assistance of Counsel

Defendant also argues that he was denied the effective assistance of counsel because his attorney was only licensed to practice in California and, had he been familiar with Michigan law, he would have advised defendant not to sign the acknowledgement of paternity form. Defendant is correct that paternity defendants have the right to counsel, *Artibee v Cheboygan Circuit Judge*, 397 Mich 54, 57; 243 NW2d 248 (1976) and MCR 3.217(D), and, thus, have the right to the effective assistance of counsel, *Covington v Cox*, 82 Mich App 644, 651; 267 NW2d 469 (1978). However, a paternity defendant cannot challenge a verdict based on ineffective assistance of counsel. *Kenner v Watha*, 115 Mich App 521, 525-526; 323 NW2d 8 (1982), citing *Covington, supra* at 651. The proper remedy for the ineffective assistance of counsel in matters concerning child support is an action for malpractice. *Id.* Therefore, defendant's claim of ineffective

assistance of counsel is without legal basis. Furthermore, even if defendant's attorney had advised him not to sign the paternity acknowledgement, an award of prior child support is appropriate under MCL 722.717(2)(c).

Affirmed.

/s/ E. Thomas Fitzgerald
/s/ Brian K. Zahra
/s/ Karen M. Fort Hood